

**§ 1608.11 Limitations on the application of these guidelines.**

(a) *No determination of adequacy of plan or program.* These Guidelines are applicable only with respect to the circumstances described in § 1608.1(d), of this part. They do not apply to, and the section 713(b)(1) defense is not available for the purpose of, determining the adequacy of an affirmative action plan or program to eliminate discrimination. Whether an employer who takes such affirmative action has done enough to remedy such discrimination will remain a question of fact in each case.

(b) *Guidelines inapplicable in absence of affirmative action.* Where an affirmative action plan or program does not exist, or where the plan or program is not the basis of the action complained of, these Guidelines are inapplicable.

(c) *Currency of plan or program.* Under section 713(b)(1), persons may rely on the plan or program only during the time when it is current. Currency is related to such factors as progress in correcting the conditions disclosed by the self analysis. The currency of the plan or program is a question of fact to be determined on a case by case basis. Programs developed under Executive Order 11246, as amended, will be deemed current in accordance with Department of Labor regulations at 41 CFR chapter 60, or successor orders or regulations.

**§ 1608.12 Equal employment opportunity plans adopted pursuant to section 717 of title VII.**

If adherence to an Equal Employment Opportunity Plan, adopted pursuant to section 717 of title VII, and approved by an appropriate official of the U.S. Civil Service Commission, is the basis of a complaint filed under title VII, or is alleged to be the justification for an action under title VII, these Guidelines will apply in a manner similar to that set forth in § 1608.5. The Commission will issue regulations setting forth the procedure for processing such complaints.

**PART 1610—AVAILABILITY OF RECORDS**

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AUTHORITY: 42 U.S.C. 2000e-12(a), 5 U.S.C. 552 as amended by Pub. L. 93-502, Pub. L. 99-570, and Pub. L. 105-231; for § 1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

**Subpart A—Production or Disclosure Under 5 U.S.C. 552**

**§ 1610.1 Definitions.**

(a) *Title VII* refers to title VII of the Civil Rights Act of 1964, as amended by Public Law 92-261, 42 U.S.C. (Supp. II) 2000e *et seq.*

(b) *Commission* refers to the Equal Employment Opportunity Commission.

(c) *Freedom of Information Act* refers to 5 U.S.C. 552 (Pub. L. 90-23 as amended by Pub. L. 93-502).

## § 1610.2

(d) *Commercial use* refers to a use or purpose by the requester of information for the information that furthers the requester's commercial, trade or profit interests. Requests for charge files by profit-making entities, other than educational and noncommercial scientific institutions and representatives of the new media, shall be considered for commercial use unless the request demonstrates a noncommercial use.

(e) *Direct costs* refers to those expenses that EEOC actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) records to respond to a request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(f) *Search* refers to the time spent looking for and retrieving material that is responsive to a request. It includes page-by-page or line-by-line identification of information within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic formats. EEOC employees should ensure that searching for materials is done in the most efficient and least expensive manner reasonably possible. For example, employees shall not search line-by-line when merely duplicating a document would be quicker and less expensive.

(g) *Duplication* refers to the process of making a copy of a record or document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, electronic formats (for example magnetic tape or disk), among others. Employees shall honor a requester's specified preference of format of disclosure if the record is readily reproducible with reasonable efforts in the requested format by the office responding to the request.

(h) *Attestation* refers to the authentication of copies of Commission documents by an affidavit or unsworn dec-

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laration from the records custodian without the Commission Seal.

(i) *Certification* refers to the authentication of copies of Commission documents by an affidavit or unsworn declaration from the records custodian under the Commission Seal.

[40 FR 8171, Feb. 26, 1975, as amended at 52 FR 13830, Apr. 27, 1987; 70 FR 57511, Oct. 3, 2005]

### § 1610.2 Statutory requirements.

5 U.S.C. 552(a)(3) requires each Agency, upon request for reasonably described records made in accordance with published rules stating the time, place, fees, if any, and procedure to be followed, to make such records promptly available to any person. 5 U.S.C. 552(b) exempts specified classes of records from the public access requirements of 5 U.S.C. 552(a) and permits them to be withheld.

[40 FR 8171, Feb. 26, 1975]

### § 1610.3 Purpose and scope.

This subpart contains the regulations of the Equal Employment Opportunity Commission implementing 5 U.S.C. 552. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all organizational units within the Commission. Official records of the Commission made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. Officers and employees of the Commission may continue to furnish to the public, informally and without compliance with the procedures prescribed herein, information and records which prior to the enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. To the extent that it is not prohibited by other laws, the Commission also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

### § 1610.4 Public reference facilities and current index.

(a) The Commission will maintain in a public reading area located in the